IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2892 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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R.L. PATEL

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 2892 of 2002

MR PARESH UPADHYAY for Petitioner No. 1

MR RV DESAI ASSTT GOVT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/07/2002

ORAL JUDGEMENT

1. The petitioner came to be appointed as Gujarati Typist in 1984 with respondent No.1 department of Social Justice and Empowerment formerly known as Social Welfare Department. The petitioner completed nine years of

service in the month of September, 1993 and was therefore granted higher grade scale of next promotional post. The petitioner had passed required examination conducted by SPIPA after making attempts permissible under the Rules. It transpires that subsequently it was found by the respondent authority that some malafide practice was adopted in conduct of the examinations and declaration of results for the examination conducted in the year 1991, result of which was declared in May, 1992. It is case of the petitioner that he was declared passed in the year 1993 out of the examination conducted in the month of July, 1992. This was detected by the authority and therefore, on 5-9-2000 the authorities declared that the petitioner was wrongly declared passed and is now declared to have failed at the examination. A consequential order came to be passed on 30th January, 2002 - Annexure-A withdrawing the benefits of higher pay scale and increments and it was also ordered to pass orders for recovery.

2. These above two orders viz. Annexures-A & I respectively aggrieved the petitioner.

3. Heard learned advocate Mr.Paresh Upadhyay for the petitioner and learned AGP Mr.R.V.Desai for respondent authorities.

Rule. In the facts and circumstances of the case, this matter is taken up for final hearing today by consent of the parties.

4. Although, the petitioner has taken various contentions, learned advocate Mr.Paresh Upadhyay has pressed into service a principal ground of violation of principles of natural justice. He has contended that the petitioner has not been afforded any opportunity of being heard and explaining as to why impugned orders going adverse to the interest of the petitioner should not be passed. Mr.Paresh Upadhyay also contended that in absence of any notice, the petitioner was not aware as to what were factors considered by the respondent authority while passing order and as such, the petitioner was not able to tender any explanation and still the order is passed. Therefore, the orders impugned in this petition may be quashed.

5. Learned AGP Mr.R.V.Desai has submitted that a fraud is committed on the respondent authority and candidates who have not passed at the examination, have scrupulously taken benefit of higher pay scale and that having been noticed by the respondent authority, action

is taken. He, however, on instruction from the officers, in all fairness, conceded to the fact that the orders are passed without affording opportunity to the petitioner of being heard.

6. In view of the fact that only contention that is raised and pressed into service is violation of principles of natural justice and in view of the fact that petition deserves to be allowed only on this count, other contentions do not require to be examined by this Court and are not examined by this Court.

7. Since the petitioner has been enjoying the benefits of higher pay scale since 1993 and since the orders are passed in September, 2000 and January, 2002 without affording any opportunity to the petitioner of being heard, they cannot be permitted to stand and they are therefore hereby quashed and set aside. As a necessary consequence, the petitioner will continue on the same post and will continue to enjoy the same benefits as he was enjoying before passing of the impugned orders. The petitioner would be entitled to all consequential benefits. The petition is, therefore, allowed in above terms. Rule is made absolute accordingly.

8. It is clarified that this orders will not be an impediment in a way of the respondent authorities taking appropriate action against the petitioner, if as deemed fit and proper, after following due process of law. Learned AGP Mr.R.V.Desai states that the respondent authorities are prepared and keen to follow procedure but apprehend non cooperation on the part of the petitioner. To this, Mr.Paresh Upadhyay submits that it is ill founded and without any basis. However, learned advocate Mr.Paresh Upadhyay states that the petitioner shall extend full cooperation in expeditious disposal of the proposed departmental action.

Date : 24-7-2002 [A.L.Dave, J.]

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